

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MARGARET D. McDOWELL,

Plaintiff,

-against-

VENGROFF, WILLIAMS, & ASSOCS., INC.

Defendant.  
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NOT FOR PUBLICATION  
ORDER

04-CV-1068 (CBA)

AMON, UNITED STATES DISTRICT JUDGE

On September 2, 2004, the Clerk of the Court entered a notation pursuant to Federal Rule of Civil Procedure 55(a) indicating that defendant Vengroff, Williams & Associates, Inc. had defaulted in this action. On September 9, 2004, this Court ordered default judgment in favor of plaintiff Margaret McDowell and referred the matter to the Honorable Steven M. Gold, United States Magistrate Judge, for an inquest on damages. The matter was subsequently stayed at the plaintiff's request pending the outcome in Hirsch v. United Collection Corp., No. 03-CV-4884 (RJD) (E.D.N.Y. Jan. 28, 2005), a similar action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") brought by the same attorney who filed the complaint initiating this case. Magistrate Judge Gold had issued a report and recommendation ("R&R") in that case recommending that the complaint be dismissed for failure to state a claim, despite the defendant's default. The R&R in that case concluded that the defendant's alleged failure to be licensed by the New York City Department of Consumer affairs did not establish a violation of the FDCPA. Report and Recommendation 6, Hirsch, No. 03-CV-4884 (RJD) (E.D.N.Y. October 27, 2004). The court in Hirsch subsequently adopted Magistrate Judge Gold's R&R over the plaintiff's objections, and the plaintiff's appeal was dismissed on procedural grounds by the

United States Court of Appeals for the Second Circuit.

On March 30, 2006, Magistrate Judge Gold issued an order in this case directing the plaintiff's attorney to submit a brief addressing why the case should not be dismissed for failure to state a claim in light of the decision in Hirsch, and warned (in view of the plaintiff's failure to respond to an earlier status report order) that a failure to submit such a brief would be deemed a concession that the findings and conclusions of Hirsch were likewise applicable in this case and would result in a recommendation that the case be dismissed. The plaintiff did not file any brief in response to the order. Magistrate Judge Gold then issued an R&R recommending that the case be dismissed for failure to respond to a court order and, in the alternative, for failure to state a claim under the FDCPA. Neither party has filed any objections to the R&R.

The Court hereby adopts as the opinion of the Court in this case that portion of Magistrate Judge Gold's R&R which recommends that the case be dismissed for failure to state a claim under the FDCPA. The Clerk of the Court is directed to enter judgment accordingly and to close the case.

SO ORDERED.

Dated: Brooklyn, New York  
June 20, 2006

Carol Bagley Amon  
United States District Judge